

July 24, 2017

Bureau of Land Management
Vernal Field Office
170 South 500 East
Vernal, Utah 84078
Attention: Stephanie Howard

Submitted electronically to: blm_ut_vernal_comments@blm.gov

**Re: Comments to Draft Environmental Assessment, December 2017 Oil and Gas
Lease Sale, DOI-BLM-UT-G010-2017-0028-EA**

Dear Ms. Howard:

This letter contains comments to the U.S. Department of the Interior Bureau of Land Management (“BLM”) Environmental Assessment for the December 2017 Competitive Oil and Gas Lease Sale, DOI-BLM-UT-G010-2017-0028-EA (the “Draft EA”). As discussed in more detail below, BLM should move forward with the Proposed Action (as defined in the Draft EA), which would result in BLM offering for lease each of the 64 parcels analyzed in the Draft EA.

I. Background

Parsons Behle & Latimer represents a number of clients that are actively engaged in environmentally responsible exploration and production of oil and natural gas resources in the Uinta Basin, Utah. On behalf of these clients, we have submitted a number of expressions of interest nominating parcels within the Green River District over the last several years. While we did not submit an expression of interest for the upcoming December 2017 Green River District oil and gas lease sale, several of parcels that we had previously nominated but were “deferred” by BLM for various reasons are included in the Proposed Action. Each of these parcels is designated as “open” for oil and gas leasing under the Vernal Field Office Resource Management Plan [October 2008] (the “VFO RMP”), as amended.

BLM's decision to include these previously nominated parcels in the Proposed Action is consistent with the VFO RMP and is proper under governing law. While BLM has recommended the "deferral" several parcels from consideration for the upcoming sale for specific reasons, we are encouraged that, in a departure from past practices, BLM included the majority of the nominated parcels in the Proposed Action. As is clear from the Draft EA and VFO RMP, rather than simply "defer" parcels that are designated as "open" for leasing under the RMP because of potential resource conflicts, BLM has numerous management tools available to mitigate potential impacts of oil and gas development on these parcels. By applying the stipulations set forth in the VFO RMP—up to and including no surface occupancy—BLM can fulfill its multiple-use mandate by providing for environmentally responsible oil and gas development while protecting competing resource values.

The Proposed Action represents a reasonable balance between furthering the federal government's longstanding objective of fostering development of energy resources from public lands and ensuring that other resource values are adequately protected.

II. The Proposed Action is Consistent with the Federal Policy of Encouraging Development of Domestic Energy Resources

As outlined by the Federal Land Policy and Management Act, 43 U.S.C. § 1701(a)(12) ("FLPMA"), BLM's governing statute, oil and gas leasing is a principal use of public lands. Indeed, FLPMA's policy statement clearly sets out that it is the policy of the United States that "the public lands be managed in a manner which recognizes the Nation's need for domestic sources of minerals . . . including implementation of the Mining and Minerals Policy Act of 1970," which Act, as to public lands, calls on the federal government to "foster and encourage private enterprise in . . . the development of domestic mineral resources." 30 U.S.C. § 21a.

Congress reaffirmed this commitment to responsible energy development on public lands with the passage of the Energy Policy Act of 2005, 42 U.S.C. §§ 15921-15928, which aimed to streamline the oil and gas permitting process on federal lands. The federal government's longstanding policy of encouraging responsible energy development on federal public lands for reasons of economic development, national security and the mineral royalties paid to the Treasury and the states, should provide the starting point for BLM oil and gas leasing decisions.

Moving forward with the Proposed Action will further these longstanding policy objectives. Were BLM to select the no action alternative or to "defer" additional parcels from the December 2017

sale, these objectives would not be met. Indeed, meeting these policy objectives is clearly outlined in the Draft EA's statement of purpose and need, which provides:

The purpose of the [sale]¹ is to respond to the nominations or expressions of interest for oil and gas leasing on specific federal mineral estate through a competitive leasing process. The need for the [sale] is established by the BLM's responsibility under the Mineral Leasing Act (MLA) of 1920, as amended, the Mining and Minerals Policy Act of 1970, the Federal Onshore Oil and Gas Leasing Reform Act of 1987 (Reform Act), and the Federal Land Policy and Management Act (FLPMA) and to promote the development of oil and gas on the public domain

Thus, the purpose and need for the for the sale is to (1) respond to expressions of interest submitted by the public; (2) comply with federal statutes; and (3) promote development of domestic oil and gas resources from federal public lands. Only the offering for lease of each of the 64 parcels identified in the Proposed Action will satisfy these objectives.

III. The Proposed Action is Consistent with the VFO RMP

The FLPMA RMP is a comprehensive statement of land management priorities that provides a "rational, consistently applied set of regulations and procedures." 43 C.F.R. § 1601.0-2 (RMPs "are designed to guide and control future management actions and the development of subsequent, more detailed and limited scope plans for resources and uses"). The RMP determines whether an area is open for oil and gas leasing and establishes the baseline protections necessary for resource conservation. In order to fulfill FLPMA's objective of orderly, consistent and informed public decision-making, management decisions for land uses must be guided by the governing RMP. 43 U.S.C. § 1712; 43 C.F.R. § 1610.3-2; 43 C.F.R. § 1610.5-3.

¹ The statement of purpose and need actually reads that the "purpose and need of the Proposed Action is to respond to..." (emphasis added). We believe that this is a mistake that should be corrected in the final EA. As defined in the Draft EA, the defined term "Proposed Action" relates to the offering for lease of 64 parcels. It is not the "Proposed Action" that BLM is analyzing in the Draft EA; instead the "Proposed Action" is one of the alternatives that is being analyzed in the Draft EA. The reason that the EA is being undertaken is not to advance the "Proposed Action," but rather to analyze which parcels to offer for competitive lease at the December 2017 competitive lease sale in compliance with the requirements of the Mineral Leasing Act. *See, e.g.*, November 2016 Oil and Gas Lease Sale, DOI-BLM-UT-G010-2016-033-EA ("The need for the sale is to respond to the public's lease nomination requests . . . The purpose of the lease sale review process is to ensure that adequate provisions are included in the lease terms, notices and stipulations to protect public health and safety, ensure the project conforms with the land use plan, and ensure full compliance with the objectives of NEPA and other federal environmental laws and regulations designed to protect the environment, and comply with the BLM's multiple use management for public lands.").

In 2005, Congress reaffirmed the commitment to responsible energy development on public lands contained in FLPMA and the Mining and Minerals Policy Act of 1970 by enacting the Energy Policy Act of 2005, which aimed to streamline the oil and gas permitting process on federal lands. Accordingly, Congress has made clear numerous times that, when appropriate under the governing land use plan, prioritize energy development on public lands.

The Uinta Basin has been home to oil and gas development for well over 60 years. Throughout this time, oil and gas operators have worked cooperatively with the numerous stakeholders to navigate the complexities that are presented by the area's unique land status and resource issues. This extensive experience with oil and gas development, the potential for additional development and the support of the cooperating agencies drove the land use planning process and led to the adoption of the VFO RMP in 2008 after a 6-plus year public planning period. During this process, the VFO affirmatively determined that each of the 64 parcels included in the Proposed Action are appropriate for oil and gas leasing, and applied area-specific stipulations to minimize resource conflicts.

We are encouraged that, for the majority of parcels analyzed in the Draft EA, BLM is contemplating offering each parcel for lease consistent with the VFO RMP. This is the kind of predictable and transparent decision-making that is contemplated by Section 202 of FLPMA, 43 U.S.C. § 1711, which requires that management decisions be guided by the governing RMP, and BLM Instruction Memorandum 2004-110, which makes clear that "all Field Offices are expected to follow their respective approved land use plans in offering for sale parcels with expressions of interest," and "fluid mineral leasing allocation decisions are made at the planning stage." We note, however, that any post-Draft EA deferrals of the parcels identified in the Draft EA would be inconsistent with these mandates and be tantamount to *ad hoc* land use planning in contravention of FLPMA's objective of ensuring that the RMP provides a "rational, consistently applied set of regulations and procedures." 43 C.F.R. § 1601.0-2.

We are extremely hopeful that BLM maintains its commitment to adhering to the governing VFO RMP for the 2017 Green River District lease sale, as well as future competitive oil and gas lease sales.

IV. Resource-Specific Comments

A) Parcels Containing Habitat for Species Listed Under the Endangered Species Act

Several of the parcels analyzed in the Draft EA contain habitat for plant and animal species listed under the Endangered Species Act (“ESA”), 16 U.S.C. §§ 1531-1599. However, as recognized in the Draft EA, this fact does not prevent the leasing of any such parcels. The VFO RMP contains a number of detailed stipulations protecting the habitat of ESA listed species, each of which has been applied to those lease parcels determined to contain habitat for listed species. *See* Draft EA, Appendix A.

In addition to the protections for ESA-listed species that are set forth in the leasehold stipulations, mitigation of impacts to threatened or endangered species, or those proposed to be listed as threatened or endangered, can and should take place on a project-specific level. Thus, prior to surface disturbing activity occurring on the leasehold, an additional review of the proposed development, and its potential impacts on ESA-listed species, will occur. This approach is consistent with the overall, tiered approach to federal oil and gas development and yields results tailored to specific projects, resources and terrain.

For each parcel analyzed in the Draft EA that contains habitat for an ESA-listed species, potential resource conflicts related to the presence of these species or their habitat is addressed through the application of the specific stipulations set forth in Appendix A to the Draft EA. Therefore, each proposed parcel will be subject to additional project-specific conditions of approval for protection of ESA-listed species prior to actual development. As such, as proposed by BLM, it is appropriate to offer each of these parcels for lease in the December 2017 sale.

B. Parcels Containing Areas of Critical Environmental Concern

Although several of the parcels analyzed in the Draft EA partially contain areas of critical environmental concern (“ACEC”), application of the management prescriptions identified for these ACECs in the VFO RMP will protect the unique characteristics of these lands. As such, the BLM has appropriately applied the leasehold stipulations for each ACEC set forth in the VFO RMP. These stipulations include no surface occupancy, timing limitations and controlled surface use, which through the land use planning process have been tailored to protect the relevant and identified values for each ACEC at issue.

C. Parcels Containing Lands with Wilderness Characteristics

Several of the parcels analyzed in the Draft EA partially contain lands with wilderness characteristics (“LWC”). Rather than “defer” these parcels as BLM has done in the past, BLM has appropriately decided to offer these parcels for lease in conformity with the VFO RMP. Several of

the LWCs at issue here were inventoried after finalization of the VFO RMP and have therefore not been analyzed in a land use plan. However, as recognized by BLM through its decision to offer these parcels for lease, this fact does not justify deferral of these parcels.

While these lands may not have LWC-specific stipulations in the VFO RMP, as the Draft EA notes, the application of other stipulations not specific to the protection of wilderness characteristics will reduce potential impacts. Indeed, the majority of the parcels containing LWCs would be offered with significant stipulations. For example, Parcel Nos. 37 and 38 partially contain the Badlands Cliffs inventory unit, but have no surface occupancy stipulations for (a) those portions of the parcels within the Nine Mile Canyon ACEC; (b) areas containing riparian areas and public water reserves; (c) areas with slopes greater than 40%; and (d) VRM Class I areas. Numerous additional proscriptive stipulations are also attached to these parcels, including controlled surface use and timing limitations. *See* Draft EA, Appendix A. Similarly, Parcels Nos. 22, 24, 25 and 32 contain portions of the Currant Canyon inventory unit. These parcels have numerous no surface occupancy stipulations attached, including those developed to protect the Lears Canyon ACEC, water resources, fragile slopes and viewsheds, along with numerous controlled surface use and timing limitations. *Id.*

Additionally, and putting aside the fact that the numerous stipulations applicable to those parcels containing portions of LWCs will provide significant reduction in impacts to these areas, BLM is under no obligation to ensure that each and every portion of an individual LWC permanently maintains its wilderness characteristics. FLPMA only requires that wilderness characteristics be considered equally with all other resources. 43 U.S.C. § 1711. Therefore, even if there were *no* stipulations in place to protect these areas, offering them for lease would still be proper under the governing land use plan. However, this is extremely unlikely to occur given the Draft EA's estimate that of the 74,145 acres contained in the 6 LWC units applicable here, only 110.5 acres are anticipated to be disturbed. *See* Draft EA, Table 4-3. This is a very small percentage of the overall LWCs and, even assuming development of each leased parcel, it is very unlikely that the small disturbance that would occur on any individual parcel would impair the wilderness characteristics of the LWC as a whole.

V. Conclusion

For the reasons stated in this letter, we ask that BLM proceed with the Proposed Action as set forth in the Draft EA and offer each of the 64 parcels analyzed therein for leasing at the December 2017 competitive lease sale.

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Sincerely,

PARSONS BEHLE & LATIMER
/S NORA R. PINCUS

Nora R. Pincus
Shareholder

NRP: